

AO-12/19/05

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:

The Boeing Company and AMB Property Corporation

)
)
) First Amended
AGREED ORDER
No. 01HWTRNR-3345

TO: The Potentially Liable Person (PLP(s)):

The Boeing Company	The AMB Property Corporation
C/o Mr. Kirk Thomson	C/o Mr. Steven Campbell
Director of Environmental Affairs	Senior Vice President
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I. JURISDICTION

This First Amended Agreed Order is issued pursuant to the authority of [RCW 70.105D.050 \(l\)](#).

II. DEFINITIONS

Unless otherwise specified, the definitions set forth in [Chapter 70.105D RCW](#) and [Chapter 173-340 WAC](#) shall control the meanings of the terms used in this Order.

Additional definitions are as follows:

1. Area 1 Property means the property at the north end of the BCA- Auburn Plant, south of the YMCA/Junior Achievement property, and north of Building 17-06, as shown in the diagram in Attachment 1.

2. Agreed Order or Order means this Order issued under [RCW 70.105D.050\(1\)](#) and [WAC 173-340-530](#). The term includes the text of this Order, all Attachments to this Order, and Ecology-approved submittals required pursuant to this Order. Order Attachments and Ecology-approved submittals are incorporated into this Order by this reference and are enforceable parts of this Order as if fully set forth herein.

3. Area of Concern (AOC) means any area of the Site where a release or threatened release of dangerous constituents (including dangerous waste and hazardous substances) has occurred, is occurring, is suspected to have occurred, or threatens to occur.

4. Boeing Auburn facility (BA facility) means the Boeing Commercial Airplanes, Fabrication Division- Auburn Plant property at 700 15th Street SW and all contiguous land, and structures, other appurtenances, and improvements on the land that Boeing used for recycling, reusing, reclaiming, transferring, storing, treating, or disposing of dangerous waste since 1966. This includes the property described in Attachment A to the original permit which was jointly issued by Ecology and EPA in August, 1987.

1 5. Boeing Commercial Airplanes, Fabrication Division- Auburn Plant (BCA- Auburn Plant)
2 means the property at 700 15th Street SW and all contiguous land, and structures, other appurtenances,
3 and improvements on the land that Boeing used for recycling, reusing, reclaiming, transferring, storing,
4 treating, or disposing of dangerous waste since 1966. However, the BCA-Auburn Plant no longer includes
5 the Safeway, YMCA/Junior Achievement, or Puget Sound Energy (PSE) properties in light of
6 modifications previously made to Part A of Boeing's RCRA Permit No. 87-1. Ecology approved the
7 modifications to Part A of the permit on September 6, 2002 for the Safeway Property, on February 27,
8 2003 for the YMCA Property, and on June 30, 2004 for the PSE Property (See Diagram, Attachment 1,
9 for the locations of the Safeway, YMCA, and PSE properties).

10 6. Cleanup Action Plan (CAP) means the document issued by Ecology under [WAC 173-340-](#)
11 [360](#) which selects Site specific corrective measures and specifies cleanup standards.

12 7. Cleanup Standards means the standards promulgated under [RCW 70.105D.030 \(2\)\(e\)](#) and
13 developed for the Site under [WAC 173-340-700\(3\)](#). These include (1) hazardous substance concentrations
14 (cleanup levels) that protect human health and the environment, (2) the location at the Site where those
15 cleanup levels must be attained (points of compliance), and (3) additional regulatory requirements that
16 apply to a cleanup because of the type of action and/or the location of the Site (applicable state and
17 federal laws).

18 8. Corrective Action means any activities including investigations, studies, characterizations
19 and corrective measures, including actions taken pursuant to [Chapter 70.105D RCW](#) and Chapter [173-340](#)
20 [WAC](#), undertaken in whole or in part to fulfill the requirements of WAC 173-303-64610 through 173-
21 303-646920.

22 9. Corrective Measure means any measure or action to control, prevent, or mitigate releases
23 and/or potential releases of dangerous constituents (including dangerous waste and hazardous substances)
24 at or from the Site, which action has been reviewed and approved by Ecology for the Site and set forth in
25 a Site specific Cleanup Action Plan (CAP) prepared in compliance with the requirements of [Chapter 173-](#)

1 340 WAC. Corrective measures may include interim actions as defined by Chapter 173-340 WAC.

2 Interim actions will not necessarily be set forth in a Site-specific CAP.

3 10. Dangerous Constituent means any constituent identified in WAC 173-303-9905 or 40 CFR
4 Part 264 Appendix IX, any constituent that caused a waste to be listed or designated as dangerous under
5 the provisions of Chapter 173-303 WAC, and any constituent defined as a hazardous substance by RCW
6 70.105D.020(7).

7 11. Dangerous Waste means any solid waste designated in WAC 173-303-070 through 173-
8 303-100 as dangerous or extremely hazardous or mixed waste. Dangerous wastes are considered
9 hazardous substances under RCW 70.105D.020 (7).

10 12. Dangerous Waste Constituent means any constituent listed in WAC 173-303-9905 and any
11 other constituent that has caused a waste to be a dangerous waste pursuant to Chapter 173-303 WAC.

12 13. Dangerous Waste Management Unit (DWMU) is a contiguous area on or in which
13 dangerous waste is placed or has otherwise come to be located, or the largest area in which there is a
14 significant likelihood of mixing dangerous waste constituents in the same area, as defined in WAC 173-
15 303-040.

16 14. Day shall always mean a calendar day unless otherwise specified. In computing any period
17 of time under this Order, if the last day falls on a Saturday, Sunday, or a state or federal holiday, the
18 period shall run until the end of the next day which is not a Saturday, Sunday, or a state or federal
19 holiday. Any time period scheduled to begin on the occurrence of an act or event shall begin on the day
20 after the act or event.

21 15. Ecology or Ecology- NWRO means the State of Washington Department of Ecology or the
22 State of Washington Department of Ecology Northwest Regional Office.

23 16. Facility or Site means the BCA - Auburn Plant, as defined above. For the purposes of
24 implementing corrective action under WAC 173-303-64620 or 173-303-64630, Facility or Site also

means all contiguous property under the control of Boeing Auburn and AMB Corporation and includes the definition of Facility at RCW 70.105D.020(4).

17. Feasibility Study (FS) means the investigation and evaluation of potential corrective measures performed in accordance with the Feasibility Study (FS) requirements of [WAC 173-340-350](#) [and the RI/FS Scope of Work attached to this Order], which includes the substantive requirements for a RCRA Corrective Measures Study, and undertaken in whole or in part to fulfill the corrective action requirements of [WAC 173-303-64610 through 173-303-646920](#).

18. Hazardous Substances means the definition of hazardous substance at [RCW 70.105D.020\(7\)](#).

19. Independent Remedial Actions means remedial actions conducted without department oversight or approval and not under an order, agreed order, or consent decree as defined in [WAC 173-340-200 and WAC 173-340-515](#).

20. Permit or Permitting Requirement, unless otherwise specified, means the requirements of [Chapter 173-303 WAC](#) for applying for, obtaining, maintaining, modifying, and terminating dangerous waste management permits.

21. Potentially Liable Person (PLP) means any person whom the Department of Ecology finds, based on credible evidence, to be liable under [RCW 70.105D.040](#). The term PLP or PLPs in this Order refers jointly to the AMB Property Corporation and The Boeing Company. AMB Property Corporation initially became a PLP as a result of its purchase of the Area 1 Property on December 16, 2005.

22. RCRA Facility Assessment (RFA) means the investigation conducted under the direction of the U.S. Environmental Protection Agency – Region Ten (U.S. EPA Region X) for releases and potential releases at or from the BA facility and the information contained in the report entitled “*The Boeing Company, Auburn Fabrication Division, Resource Conservation and Recovery Act Facility Assessment, Final Report, June 19, 1998, Prepared by Tetra Tech EM Inc*” (“RFA Report”). The RFA Report is incorporated into this Order by this reference as if fully set forth herein.

23. Release means any intentional or unintentional spilling, leaking, pouring, emitting, emptying, discharging, injecting, pumping, escaping, leaching, dumping, or disposing of dangerous waste or dangerous constituents into the environment. It also includes the abandonment of or the discarding of barrels, containers, and other receptacles containing dangerous waste or dangerous constituents and includes the definition of release in [RCW 70.105D.020 \(20\)](#).

24. Remedial Investigation (RI) means a Site wide investigation and characterization performed in accordance with the requirements of [Chapter 173-340 WAC](#) and the remedial investigation/feasibility study (“RI/FS”) Scope of Work described in Section VI of this Order. The Ecology approved RI will be deemed to be equivalent to a RCRA Facility Investigation, fulfilling the corrective action requirements of WAC 173-303-64610 through 173-303-646920.

25. Solid Waste Management Unit (SWMU) means the definition of Solid Waste Management Unit at [WAC 173-303-040](#), including any discernible location at the Site, where solid wastes have been placed at any time, irrespective of whether the location was intended for the management of solid or dangerous waste. These SWMUs include any area at the Site at which solid wastes, including spills, have been routinely and systematically released and include regulated units as defined by [Chapter 173-303 WAC](#). Pursuant to the RFA Report and information provided by The Boeing Company, Ecology has identified (in attachment 2) the SWMUs and Areas of Concern (AOCs) at the Site.

26. Submittal shall include any work plan, report, status report, or any other written document required to be submitted to Ecology pursuant to this Order.

III. OBJECTIVES

The remedial action objectives for this Site are:

1. The PLPs shall complete a remedial investigation and feasibility study (RI/FS) at the Site, to be approved by Ecology and conducted in accordance with the requirements of [Chapter 70.105D RCW](#) and [Chapter 173-340 WAC](#). The purpose of the RI/FS is, in part, to satisfy the corrective action requirements of [WAC 173-303-64610 through 173-303-646920](#).

2. After completion and Ecology approval of the RI/FS, the PLPs shall prepare a draft Cleanup Action Plan (CAP) according to the requirements of [WAC 173-340-380](#).

3. After Ecology review of the draft CAP, Ecology and the PLPs intend to negotiate a draft Consent Decree or new Agreed Order. The Consent Decree or Agreed Order will provide for the implementation of a CAP to satisfy the requirements of [WAC 173-340-400](#) and to concurrently satisfy the corrective action requirements of [WAC 173-303-64610 through 173-303-64690](#).

4. Finalization of the CAP and the Consent Decree or Agreed Order after public review and comment. Pursuant to the Consent Decree or Agreed Order, the PLPs will design, construct, operate, and monitor the selected cleanup or corrective actions. The cleanup will be designed to address releases into the environment of dangerous constituents at or from the SWMUs and AOCs at the Site.

5. Performance by the PLPs of interim actions as needed, which are required, reviewed and approved by Ecology in accordance with [WAC 173-340-430](#). The purpose of the identified interim actions is to eliminate or reduce the migration of contamination in the surficial and subsurface soils, and groundwater. If interim actions are needed to address releases at SWMUs or AOCs listed in Attachment 2 at a future date, then this paragraph will apply.

6. If Ecology finds that further remedial investigation and/or cleanup action is required, Ecology will identify any necessary changes to the RI work plan and/or amendments or attachments to the Agreed Order to address such Additional Work. Accordingly, this Agreed Order will integrate prior independent remedial action activities with the remedial action requirements hereunder.

IV. FINDINGS OF FACT

Ecology makes the following Findings of Fact.

1. The Boeing Company is and has been the owner and operator of the BA facility since 1966. In 1974, the Boeing Company purchased GSA warehouses, adding to the overall facility's size. The BCA-Auburn Plant no longer includes the Safeway, YMCA/Junior Achievement, or PSE properties as described in Section II.5.

1 2. The Boeing Company owned and operated the BA facility as a dangerous waste
2 management facility on or after November 19, 1980, the date which subjects facilities to the permitting
3 requirements of the [Resource Conservation and Recovery Act, 42 U.S.C. § 6921 et. seq. \(RCRA\)](#),
4 including interim status requirements pursuant to Section 3005 of RCRA and implementing regulations
5 thereunder, and including authorized state regulations promulgated in [Chapter 173-303 WAC](#).

6 3. On August 11, 1980, the Boeing Company notified the U.S.E.P.A. Region 10 of its
7 dangerous waste management activities. In the notification, the Boeing Company identified itself as
8 managing the following dangerous wastes under [WAC 173-303-082](#) and [WAC 173-303-9904](#) at the BA
9 facility: F001, F002, F003, F005, F006, F007, F008, F009, F010, F011, F017, and F018.

10 4. Pursuant to the August 11, 1980 notification, the Boeing Company was issued
11 identification number WAD041337130 by U.S. EPA Region X.

12 5. On November 17, 1980, the Boeing Company submitted Part A of the RCRA permit
13 application to the U.S.E.P.A. Region X. In the Part A Application, the Boeing Company identified itself
14 as managing the following dangerous wastes under [WAC 173-303-082](#) and [WAC 173-303-9904](#) at the
15 BA facility: F001, F002, F003, F005, F006, F007, F008, F009, F010, F011, F017, F018, D001, D002,
16 D003, D006, D007, and K054.

17 6. On July 13, 1987, Ecology issued a final status RCRA Permit to the Boeing Company for
18 the BA facility.

19 7. On September 24th and 25th, 1997, Tetra Tech EM Inc., contractor to the U.S.E.P.A
20 Region X performed a RCRA Facility Assessment (RFA) for releases and potential releases at or from the
21 BA facility. The purpose of an RFA is to identify those areas where releases of hazardous substances, as
22 defined in [RCW 70.105D.020 \(7\)](#), may have occurred or may be occurring.

23 8. Pursuant to the RFA Report and information provided by the Boeing Company, Ecology
24 has identified (in Attachment 2) the Solid Waste Management Units (SWMUs) and Areas of Concern
25 (AOCs) at the Site. SWMUs and AOCs at the Site have been documented in the RCRA Facility

1 Assessment Final Report, prepared for the EPA by Tetra Tech EM Inc., June 19, 1998, and filed at the
2 Department of Ecology, Northwest Regional Office (Ecology –NWRO). Hazardous constituents which
3 have been detected from releases/or potential releases of hazardous substances found in either soil or
4 groundwater include, but are not limited to: methyl ethyl ketone, 4-methyl 2-pentanone, xylenes, ethyl
5 benzene, toluene, styrene, chlorobenzene, 1,2-dichlorobenzene, 1,4-dichlorobenzene, acetone, arsenic,
6 cadmium, barium, mercury, selenium, silver, lead, nickel, zinc, benzene, chromates, cadmium, copper,
7 alodine, 1,1,1-trichloroethane, 1,2- Dichloroethylene, trichloroethylene, perchloroethylene, ethylene
8 glycol ether, lubricant oils, diesel, gasoline, hydraulic fluids, gear oils, sulfuric acid, hydrochloric acid,
9 hydroflouric acid, chromic acid, nitric acid, sodium hydroxide, sodium cyanide, potassium cyanide,
10 polychlorobiphenyls, and polycyclic aromatic hydrocarbons. Some of the releases of these hazardous
11 constituents are recorded in the following documents:

12 (A) Hart Crowser, Inc., May 15, 1986, *Auburn Hazardous Waste Storage Facility*
13 *Potential Contamination Assessment*. (156)

14 (B) Hart Crowser, Inc., July 11, 1986, *Sump and Contaminated Soil Removal,*
15 *Hazardous Waste Storage Facility, Boeing Auburn*. (155)

16 (C) Boeing Corporate SHEA, Quadrant, Kennedy-Jenks, 1994, *Volatile Organics in*
17 *Groundwater at Auburn Facility*. (1467)

18 (D) Kennedy-Jenks, November 1991, *Technical Report-Preliminary Subsurface*
19 *Investigation Rinsewater Treatment Plant, Boeing Auburn*. ((2121)

20 (E) Kennedy-Jenks, January 1994, *Technical Report-Hydrogeologic Investigation,*
21 *Rinsewater Treatment Plant Area, Boeing Auburn*. (123)

22 (F) PSAPCA and Auburn Fabrication Division, March 1990, *NOC (#3191) and*
23 *Application for Approval*. (762)

- 1 (G) SECOR International Incorporated (SECOR), July 1996, Preliminary Subsurface
2 Assessment Investigation, 17-10 Building, G&L Post Mill, Boeing Commercial
3 Airplane, Auburn, Washington. (1542)
- 4 (H) SECOR International Incorporated (SECOR), September 1996, *Preliminary*
5 *Subsurface Assessment Investigation, 17-06 Building, Briquetting Machine Boeing*
6 *Commercial Airplane Group.* (1324)
- 7 (I) Geoengineers, May 1991, *Report of Geoenvironmental Services, Subsurface*
8 *Assessment, Two Underground Storage Tanks Near Building 17-06, Boeing*
9 *Fabrication Division, Auburn, Washington.* (72)
- 10 (J) Geoengineers, April 1992, *Report of Geoenvironmental Services, Drilling Additional*
11 *Borings, Building 17-06, Boeing Fabrication Division, Auburn, Washington.* (147)
- 12 (K) Kennedy-Jenks, May 1996, *Technical Report-1995-Hydrogeologic Investigation and*
13 *Summary Report, Boeing Auburn.* (96)
- 14 (L) Dames and Moore, 1987-1992, *UST Groundwater Monitoring Report.* (91)
- 15 (M) Boeing Auburn, July 1997, *Letter Regarding Report of Release Pursuant to WAC*
16 *173-340-300(2), 17-05 Building, Boeing –Auburn Plant.*
- 17 (N) Kennedy-Jenks, February 1995, *Technical Report-Hydrogeologic Investigation,*
18 *Building 17-05, Boeing Auburn.* (2119)
- 19 (O) Kennedy-Jenks, May 1996, *Technical Report, 1995-Hydrogeologic Investigation*
20 *and Summary Report, Boeing Auburn.* (96)
- 21 (P) Kennedy-Jenks, April 1997, *Final Report-Building 17-05 Vapor Degreaser*
22 *Removal, Boeing Auburn.* (2169)
- 23 (Q) Geoengineers, June 1997, *Site Characterization Report, 17-29 Titanium Bailing*
24 *Area, Auburn, Washington. <<ne>>*

- (R) Geoengineers, May 1991, *Report-Sump Tank Removal and Replacement, Building 17-29, The Boeing Company, Auburn, Washington.* (82)
- (S) Kennedy-Jenks, May 1994, *Environmental Services Decontamination and Demolition Projects, 17-02 and 17-05 Building.* (133)
- (T) Kennedy-Jenks, May 1997, *Technical Report-Building 17-05 Area Hydrogeologic Characterization.* <<ne>>
- (U) AGI Technologies, November 1996, *Final Closure Report, Resource Conservation and Recovery Act (RCRA) Acid and Cyanide Tank Closures, 17-07 Building, Boeing Commercial Airplane Group-Fabrication Division, Auburn, Washington.* (2046)
- (V) Kennedy/Jenks; October, 1993, *Independent Remedial Action, 17-66 Building East Construction Site, Boeing Auburn.* (154)
- (W) Kennedy/Jenks; February 22, 1994, *Building 17-08, Environmental Response Action.* (157)

9. Hazardous substances have been and may continue to be released at the Site into the environment including: surface water drainage areas; groundwater; air; human work areas; and floral and faunal habitats.

10. The Boeing Company submitted a Part B renewal application dated September 30, 1998 for storage of 220 gallons of dangerous waste within the 17-66 building.

11. The Department of Ecology did not issue a RCRA Permit to cover storage of the 220 gallons of dangerous waste within the 17-66 building. Boeing withdrew its application.

12. The BA facility has been operating under conditions of its Dangerous Waste Permit signed by Ecology and the U.S.E.P.A. Region X in August 1987. However, the BCA-Auburn Plant no longer includes the Safeway, YMCA/Junior Achievement, or PSE properties as described in Section II.5. Other than dangerous wastes treated by its wastewater treatment unit under permit-by-rule, the BCA-

1 Auburn Plant will not store, treat, or land-dispose of dangerous wastes under the State of Washington
2 Dangerous Waste Management Permit No. WAD041337130.

3 13. On August 14, 2002, the Boeing Company and Ecology entered into Agreed Order No.
4 01HWTRNR-3345, wherein the Boeing Company agreed to complete a remedial investigation, a
5 feasibility study, draft a CAP, and perform interim actions as necessary to remediate the Site. This First
6 Amended Agreed Order No. 01HWTRNR-3345 fully supersedes the 2002 Agreed Order.

7 14. On December 16, 2005, the AMB Property Corporation purchased the Area 1 Property
8 [parcels 8, 9 and 12, Attachment 1] from the Boeing Company. The Diagram in Attachment 1 represents
9 the current BCA-Auburn Plant boundaries, including the Area 1 Property.

10 15. On July 14, 2004, The Boeing Company began implementation of an interim remedial
11 action in accordance with Section III (5) of Agreed Order No. 01HWTRNR-3345. A public comment
12 period was held from May 24, 2004 through June 23, 2004 prior to Ecology approval of the Interim
13 Action Work Plan. Ecology approved the Interim Action Work Plan by letter dated July 13, 2004. See
14 Attachment 9, [the work plan]. This interim remedial action is intended to slow the migration and to
15 remediate Trichloroethene in groundwater underneath Solid Waste Management Unit, S-12b, and Area of
16 Concern, A-08 [see Attachment 2]. Three injections of a non-toxic media have been completed in
17 accordance with the approved interim remedial action work plan: Final Interim Remedial Action Work
18 Plan, Boeing Auburn Area 1 (Landau Associates, May 7, 2004). By creating conditions favorable to
19 reductive dechlorination these injections have, at this time, reduced the levels of hazardous constituents in
20 groundwater. Currently, the PLPs are completing compliance monitoring for the interim remedial action
21 as required by [WAC 173-340-410](#).

22 16. The continuation of the interim action and completion of compliance monitoring for the
23 interim remedial action is set forth in Attachment 11 of this Agreed Order.

1 V. ECOLOGY DETERMINATIONS

2 1. The Boeing Company and AMB Property Corporation are persons within the meaning of
3 [RCW 70.105D.020 \(14\)](#).

4 2. The Boeing Company and AMB Property Corporation are the owners and operators of a
5 dangerous waste management Facility that has operated, and is operating, under final status subject to
6 [Section 3005\(e\)](#) of RCRA and regulations promulgated thereunder, including authorized state regulations
7 in Chapter 173-303 WAC.

8 3. Certain waste and constituents found at the Site are dangerous wastes and/or dangerous
9 constituents as defined in [WAC 173-303-040](#), and shown in Section II of this Order.

10 4. These dangerous wastes and dangerous constituents are considered hazardous substances
11 within the meaning of [RCW 70.105D.020 \(7\)](#).

12 5. Based on the Findings of Fact and the administrative record, Ecology has determined that
13 releases and potential releases of hazardous substances at and/or from the Site that originated at the BA
14 facility present a threat to human health and the environment. Ecology has further determined that this
15 Agreed Order should be issued in order to achieve the objectives stated in Section III hereof.

16 6. First Amended Agreed Order No. 01HWTRNR-3345 fully supersedes Agreed Order No.
17 01HWTRNR-3345.

18 7. By a letter dated April 7, 1999, the Boeing Company voluntarily waived its rights to
19 notice and comment and accepted Ecology's determination that the Boeing Company is a “potentially
20 liable person” under [RCW 70.105D.040](#).

21 8. By a letter dated December 20, 2005, the AMB Property Corporation voluntarily waived
22 its rights to notice and comment and accepted Ecology's determination that the AMB Property
23 Corporation is a “potentially liable person” under [RCW 70.105D.040](#).

24 9. Pursuant to [RCW 70.105D.030 \(I\)](#) and [RCW 70.105D.050](#), Ecology may require
25 potentially liable persons to investigate or conduct other remedial actions with respect to the release or
26 threatened release of hazardous substances, whenever it believes such action to be in the public interest.

10. Ecology has determined that the actions, including investigations, required by this Order are in the public interest.

11. By Entering into this Order, The Boeing Company and AMB Property Corporation make no admissions of fact or liability. However, The Boeing Company and AMB Property Corporation agree not to contest the above facts or status as PLPs in any proceeding or administrative action brought by Ecology to enforce this Order.

VI. WORK TO BE PERFORMED

Based on the foregoing Facts and Determinations, it is hereby ordered that the PLPs take the following remedial actions and that these actions be conducted in accordance with [Chapter 173-340 WAC](#) and applicable provisions of [Chapter 173-303 WAC](#), unless otherwise specifically provided for herein.

1. Pursuant to Agreed Order No. 01HWTRNR-3345, Section VI.1., the Boeing Company submitted a draft remedial investigation (“RI”) work plan which was approved by Ecology on February 17, 2004. The draft RI work plan follows the requirements specified in [WAC 173-340-350](#) and the Scope of Work, Attachment 3. On December 5, 2003, Ecology approved an RI work plan for the Area 1 Property. The PLPs shall continue to implement the RI work plans as approved by Ecology. Other documents related to the RI, Feasibility Study (FS) or Draft Cleanup Action Plan (DCAP) may be viewed at a local public repository. See Attachment 4, Public Participation Plan, Section III [repository].

2. Pursuant to Agreed Order No. 01HWTRNR-3345 Section VI. 2, the Boeing Company submitted to Ecology-NWRO reports and data generated with respect to the independent remedial investigation and remediation activities at SWMUs and AOCs listed in Attachment 2, column III: Independent Remediation Work Conducted and/or Additional Work Not Needed to Meet Standards at the Site. These reports and data are listed in Attachment 6.

3. The PLPs shall provide for the continued implementation, including monitoring, of the Area 1 Property interim action as set forth in Attachment 11.

1 4. If Ecology identifies any additional remedial investigation beyond those activities
2 conducted independently as being necessary to meet the objectives of this Agreed Order, Ecology will
3 notify the PLPs of its requirements for Additional Work as provided in Section VII.7.

4 5. Upon completion of the remedial investigation work described in the final Ecology-
5 approved RI work plan, the PLPs shall submit to Ecology-NWRO a draft RI report as provided in the
6 approved RI work plan schedule. Within 60 days of receipt of Ecology comments on the RI Report, the
7 PLPs shall submit a revised RI report incorporating Ecology's comments.

8 6. Within sixty (60) calendar days after receiving written Ecology approval of the final RI
9 report, the PLPs shall submit to Ecology-NWRO a draft FS work plan. The draft FS work plan shall be
10 written in accordance with [WAC 173-340-350](#) and shall contain, at minimum, methods for evaluating the
11 technical, environmental health, human health, and financial costs associated with each cleanup action
12 alternative. The FS work plan shall contain a time schedule for completing the FS activities and, at a
13 minimum, the methods for evaluating the following:

14 (A) Current Conditions: the PLPs shall update Ecology on the current nature and extent of
15 dangerous constituents released into the environment at or from the SWMUs and AOCs
16 addressed in the RI, if different from the results of the RI report.

17 (B) Technical: the PLPs shall develop a set of cleanup action alternatives to address those
18 SWMUs and AOCs to be evaluated in the FS. The initial set of cleanup action alternatives shall
19 include options that meet the requirements of [WAC 173-340-360](#) and the expectations of [WAC](#)
20 [173-340-370](#). The FS work plan may incorporate prescreening of cleanup action alternatives in
21 order to streamline the FS process, and may propose a focused analysis to support the use of
22 presumptive remedies recognized in U.S. Environmental Protection Agency cleanup guidelines.
23 The PLPs shall, at a minimum, evaluate the following for each pre-screened cleanup action
24 alternative:

1 (i) the permanence and practicability of the option, based upon factors of overall
2 protectiveness of human health and the environment, long-term effectiveness,
3 manageability of short-term risks, permanent reduction of toxicity, mobility and volume
4 of dangerous constituents, cost, implementability, and community concerns as specified
5 in [WAC 173-340-360\(3\)\(f\)](#);

6 (ii) chemical and physical characteristics and estimated quantity of remediation
7 wastes generated;

8 (iii) compliance with all applicable Federal and State applicable, relevant, and
9 appropriate regulations (“ARARs”), including but not limited to standards in RCRA, the
10 Clean Water Act, 33 U.S.C. § 1251 *et. seq.*, the Clean Air Act, 42 U.S.C. § 7401 *et. seq.*,
11 the Model Toxics Control Act (“MTCA”), RCW 70.105D, the Toxic Substances Control
12 Act, 15 U.S.C. § 2601 *et. seq.* (“TSCA”), and the Safe Drinking Water Act, 42 U.S.C. §
13 1401 *et. seq.* (“SDWA”);

14 (iv) limitations of Site use as a result of implementing each cleanup action alternative,
15 including but not limited to deed restrictions, access control mechanisms to prevent
16 unauthorized entry, surface covers, and prohibition on use of groundwater for drinking,
17 agricultural, or industrial purposes;

18 (v) if required by Ecology, examples of Sites using the same cleanup action
19 alternatives for similar dangerous constituents, and a discussion of the results achieved;
20 and

21 (vi) discussion of laboratory or bench-scale tests necessary to evaluate the
22 effectiveness of any cleanup action alternative.

23 (C) Environmental: Evaluate the future long and short term adverse effects on the
24 environment of each remedial option, and measures necessary to mitigate any adverse effects.

1 Evaluate both the positive and negative environmental consequences of implementing each
2 remedial option.

3 (D) Human Health and the Environment: Evaluate the future long and short term potential
4 exposure to human and environmental receptors of residual contamination during and after
5 remedy implementation, based on potential exposure routes and toxicity of dangerous
6 constituents.

7 (E) Cost Estimate: Evaluate the capital costs (mobilization, design, construction, permits,
8 licenses, and taxes.) for each cleanup action alternative. Include, at a minimum, quantities, unit
9 costs, and total costs, annual operating costs (labor, expendable goods, utilities, and laboratory
10 analysis), and present worth analysis of each remedial option. Further, the cost of removing new
11 structures can not be a factor in favor of a less permanent clean up action under [WAC 173-340-](#)
12 [360\(3\)](#). “New structures” mean structures not in existence as of the effective date of this Agreed
13 Order.

14 (F) Restoration Timeframe: Submit an estimate of the time required to meet the remediation
15 goals for each cleanup action alternative in the draft FS work plan.

16 (G) Recommendation: Provide a recommendation for one or more cleanup action alternatives
17 based on the factors described above.

18 7. Upon completion of the feasibility study work described in the final Ecology approved
19 FS work plan, the PLPs shall submit to Ecology-NWRO a draft FS report as provided in the approved FS
20 work plan schedule. Within 60 days of receipt of Ecology comments on the FS, the PLPs shall submit a
21 revised FS incorporating Ecology’s comments.

22 8. After Ecology concurrence and approval of the final FS report, and if required by
23 Ecology, the PLPs shall submit a draft cleanup action plan (“DCAP”) to Ecology - NWRO within forty
24 five (45) calendar days of receipt of formal notification of such requirement by letter. The notification
25 shall identify the required scope of the DCAP. The DCAP shall meet the requirements of [WAC 173-340-](#)

360, -400(1) through (9), -410 as well as WAC 173-303-64610 through 173-303-646920. The PLPs acknowledge that monitoring wells or other remediation technology may need to be placed within the new building structures or offices as part of a final cleanup action plan ("CAP").

9. The scope of any DCAP required by Ecology shall be subject to the Additional Work provisions in Section VII. 7.

10. After the parties agree upon the terms of a DCAP, the PLPs shall enter into negotiations with Ecology regarding a consent decree or agreed order to design, construct, operate, and monitor the chosen remedial option(s) described in the DCAP. Existence of new structures, as defined in paragraph VI. 6 (E), on the Site can not frustrate remedial actions Ecology determines to be necessary as part of final clean up. After public review and comment on the DCAP document and agreed order or consent decree, Ecology may modify the DCAP and agreed order or consent decree. Then Ecology shall approve a final CAP.

11.. Notwithstanding the foregoing, if the Remedial Investigation identifies releases of dangerous constituents at the Site from both the PLPs and non-PLP third party sources which, due to source(s), nature and/or location, render it impracticable for the PLPs to remediate the releases from the PLPs sources without involving third parties (the "Commingled Releases"), Ecology may allow the PLPs to conduct an additional Remedial Investigation and/or a Feasibility Study, and prepare a Cleanup Action Plan addressing Commingled Releases pursuant to a separate agreed order or consent decree, as appropriate. In such event, the PLPs and Ecology may proceed as follows under this Agreed Order:

(A) Prepare a DCAP and issue an Interim CAP under this Agreed Order addressing non-Commingled Releases and, as appropriate, any sources of Commingled Releases at the Site, pending issuance of a CAP addressing Commingled Releases under separate order or decree;

(B) Proceed with negotiation of a consent decree or agreed order to implement the Interim CAP; and

1 (C) Issue a final CAP under this Agreed Order incorporating the CAP for the Commingled
2 Releases once it is finalized under separate order or decree.

3 In lieu of or in addition to the foregoing, the PLPs and Ecology may agree to take such other
4 actions as may be appropriate to provide for remediation of non-Commingled Releases and Commingled
5 Releases under separate orders or decrees.

6 12. The PLPs shall follow the reporting guidelines in [WAC 173-340-840](#) for all parts of this
7 order unless otherwise agreed to by both Ecology and the PLPs. All data generated pursuant to this order
8 shall be submitted to Ecology-NWRO, including all outlier and duplicate data. In addition, all
9 groundwater, sediment, surface water, and soil data generated shall be submitted to Ecology-NWRO as
10 copies of the original reported laboratory data sheets, in tabulated data format, and in electronic format
11 using the most recent compatible software to which Ecology and the PLPs agree, for the constituent
12 concentrations detected above method detection limits in the above referenced environmental media.
13 Pursuant to [WAC 173-340-840\(5\)](#), the PLPs shall submit all soil and groundwater sampling data to
14 Ecology according to the requirements of Ecology Policy 840 Data Submittal Requirements. Laboratory
15 detection limits and practical quantitation limits shall be reported for each chemical constituent
16 concentration detected.

17 13. The PLPs shall submit quarterly status reports to Ecology-NWRO, starting from the
18 effective date of this Agreed Order until all of the requirements of this Agreed Order are completed to
19 Ecology's satisfaction. The submittal shall be due on the 15th day of the month following the three-
20 month activity period. The PLPs shall describe the following in each status report:

21 (A) all work conducted pursuant to this Agreed Order during the last quarter, including interim
22 action work;

23 (B) occurrence of any problems, how problems were rectified, deviations from the work plans
24 and an explanation for all deviations;

25 (C) projected work to occur in the upcoming quarter;

1 (D) summaries of significant findings, changes in personnel, summaries of contacts with all
2 federal, state, local community, and public interest groups; and

3 (E) all laboratory analyses (as copies of the original laboratory reporting data sheets, in
4 tabulated data format) for which quality assurance procedures were completed during the
5 quarter.

6 If both Ecology and the PLPs agree that such a change is necessary, the frequency of progress report
7 submittals shall be revised. This would be an example of a minor modification that may be agreed to by
8 Ecology and the PLPs without public comment.

9 14. The PLPs shall notify Ecology's Project Coordinator in writing of any newly-identified
10 SWMU(s) or AOCs, newly-discovered releases from known SWMU(s) or AOCs, and newly-discovered
11 significant releases of dangerous waste or dangerous constituents, as defined in [WAC 173-303-](#)
12 [806\(4\)\(a\)\(xxiv\)\(A\)](#), at or from the Site no later than fifteen (15) calendar days after discovery. Additional
13 activities to address new discoveries are subject to the Additional Work provisions of Section VII.7.

15 VII. TERMS AND CONDITIONS OF ORDER

16 1. Public Notices: Ecology shall be responsible for providing public notice. Ecology
17 reserves the right to modify or withdraw any provisions of this Order should public comment disclose
18 facts or considerations to Ecology that the Order is inadequate or improper in any respect.

19 2. Remedial and Investigative Costs: The PLPs agree to pay costs incurred by Ecology
20 pursuant to this Order. These costs shall include work performed by Ecology or Ecology's contractors for
21 investigations, remedial actions, and Order preparation, negotiations, oversight and administration.
22 Ecology costs shall include costs of direct activities and support costs of direct activities as defined in
23 [WAC 173-340-550\(2\)](#). The PLPs agree to pay the required amount within thirty (30) days of receiving
24 from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification
25 of involved staff, and the amount of time spent by involved staff members on the project. A general

description of work performed will be provided upon request. Itemized statements will be prepared quarterly. Failure to pay Ecology's costs within thirty (30) days of receipt of the itemized statement of costs will result in interest charges. Interest charges shall accrue at the rate designated in [WAC 173-340-550\(4\)](#). The current rate is 12% (annual percentage rate, compounded monthly) on all remedial action costs not paid within ninety days of the billing date.

In order to assure payment to the proper authority, the address for mailing via the post office is:

Cashiering Section
P.O. Box 5128
Lacey, WA 98509-5128

If you choose to send a check by a messenger/overnight delivery service, the address to use is:

Cashiering Section
300 Desmond Drive
Lacey, WA 98503

Please indicate on the check that it is for cost recovery at the BCA – Auburn Plant so it is properly credited. Enclosing the bottom portion of our invoice will accomplish this.

3. Financial Assurance: The PLPs shall establish and maintain financial assurance for corrective action in the amount necessary to implement the Cleanup Action Plan (CAP) and the Compliance Monitoring Plan (CMP), as provided in [WAC 173-340-380](#) and [WAC 173-340-410](#), respectively, and required by WAC 173-303-64620. Except as modified below and in the absence of detailed regulations, Federal Register/Vol. 51, No. 206/Friday, October 24, 1986/Proposed rules and Federal Register/Vol. 61, No. 85/Wednesday, May1, 1996/Proposed Rules, shall be used as guidance for providing financial assurance for corrective action. In a manner consistent with this guidance, the Permittees shall make satisfactory demonstration to the Department that all financial assurance documents include appropriate provision for the Department to gain access to the funds to implement corrective action in the event the Department determines that corrective action is not being conducted in accordance

1 with the provisions of this permit. Upon evidence of the failure of the Permittees to demonstrate
2 continuous financial assurance for corrective action, the Department may direct the payment or use of
3 funds to assure that the approved corrective action plan is carried out. Acceptable mechanisms include
4 letters of credit, surety bonds guaranteeing performance, liability insurance, trust funds, or equivalent
5 mechanisms as approved by the Department. The PLPs shall provide Ecology's project manager with
6 documentation of this financial assurance within sixty (60) days of Ecology's first issuance of the final
7 CAP/CMP. The PLPs shall adjust the financial assurance coverage and provide Ecology's project
8 manager with documentation of the updated financial assurance for:

9 (A) Inflation, annually, within 30 days of the anniversary date of the first issuance of the final

10 CAP/CMP; or if applicable, the modified anniversary date, that has been set in (2), below,

11 and

12 (B) Changes in cost estimates, within 30 days of Ecology's issuance of the modified CAP/CMP,

13 which modifies the anniversary date.

14 Each PLP shall notify Ecology's project manager by certified mail of the commencement of a voluntary
15 or involuntary bankruptcy proceeding under Title 11, United States Code, naming that PLP, within ten
16 (10) days after commencement of the proceeding. A guarantor of a corporate guarantee must make such a
17 notification if he is named as debtor as required under the terms of the corporate guarantee. A PLP who
18 has established financial assurance for corrective action with an acceptable mechanism, mentioned above,
19 will be deemed to be without the required financial assurance or liability coverage:

20 (A) in the event of bankruptcy of the trustee or issuing institution; or

21 (B) the authority of the trustee institution to act as trustee has been suspended or revoked; or

22 (C) the authority of the institution issuing the surety bond, letter of credit or insurance policy
23 has been suspended or revoked.

24 The PLP in bankruptcy must establish other financial assurance within sixty (60) days of bankruptcy, or
25 suspension/revocation of authority.

1 4. Designated Project Coordinators:

2 The Project Coordinator for Ecology is:

3 Name: Ms. Robin Harrover
4 Address: Department of Ecology - Northwest Regional Office
5 3190 160th Avenue S.E.
6 Bellevue, WA 98008-5452
7 Telephone: (425)-649-7232
8 FAX: (425)-649-7098
9 E-mail: rhar461@ecy.wa.gov

10 The Project Coordinator for the Site is:

11 Name: Mr. James Bet
12 Address: Boeing Environmental Affairs
13 P.O. Box 3707, M/S 7A-WH
14 Seattle, WA 98124-2207
15 Telephone: (206) 679-0433
16 FAX: (206) 766-5343

17 The Project Coordinator(s) shall be responsible for overseeing the implementation of this Order. To the
18 maximum extent possible, communications between Ecology and the PLPs, and all documents, including
19 reports, approvals, and other correspondence concerning the activities performed pursuant to the terms
20 and conditions of this Order shall be directed through the Project Coordinator(s). Notification
21 requirements in this Order may be satisfied by electronic mail with agreement between the Project
22 Coordinators. Should Ecology or the PLPs change Project Coordinator(s), written notification shall be
23 provided to Ecology or the PLPs at least ten (10) calendar days prior to the change.

24 5. Ecology Approvals and Short-form Dispute Resolution Process: The PLPs shall submit

25 draft Submittals pursuant to the schedules required by this Agreed Order or as otherwise approved
26 hereunder. With the exception of periodic status reports, Ecology will review all Submittals required by
27 this Order, and will provide written approval, or disapproval with comments and/or modifications to be
28 made by the PLPs. A Submittal shall become final when it is approved by Ecology in writing. Once
29 approved in writing by Ecology, all submittals to Ecology are incorporated by reference and become
30 enforceable parts of this Agreed Order, as if fully set forth herein. Following approval of any Submittal,
31 the PLPs shall commence all Work required thereby within fifteen (15) days after receipt of Ecology
32 approval, unless a longer time is specified by Ecology.

1 During the performance of work under an approved submittal, the Project Coordinators may
2 verbally agree to minor field modifications to the submittal. In such case, the PLPs shall submit a
3 description of the modification to Ecology's Project Coordinator in writing within seven (7) days of the
4 verbal agreement, and Ecology's Project Coordinator shall provide written confirmation of the agreed
5 modification.

6 When Ecology provides comments or proposed modifications to the PLPs on any Submittal, and
7 if the PLPs agree with Ecology's comments and/or proposed modifications, the PLPs shall submit a
8 revised Submittal incorporating all of Ecology's comments and/or proposed modifications within thirty
9 (30) days of the PLPs' receipt of Ecology's comments and/or proposed modifications, unless a longer time
10 is approved by Ecology. If following submission of a draft Submittal, the PLPs disagree or have
11 questions concerning Ecology's comments and/or required modifications, the PLPs, within seven (7) days
12 after receipt of Ecology's comments or required modifications, may request a meeting or telephone
13 conference, with the Ecology Project Coordinator. Such request shall be in writing and will establish a
14 twenty (20) day informal resolution period, unless a longer period is approved by Ecology, beginning
15 with the date of the written request. The written request shall include a statement of the issues the PLPs
16 wish to address.

17 The informal resolution period shall extend the due date for resubmittal. If agreement is reached
18 within the informal resolution period, the PLPs shall incorporate into a revised Submittal the agreed-upon
19 comments and/or modifications within thirty (30) days after reaching agreement, unless a longer time is
20 specified by Ecology. If agreement is not reached within the informal resolution period, Ecology shall
21 send a written letter of disapproval to the PLPs. The PLPs shall then either submit a revised, final draft
22 Submittal which incorporates all Ecology comments or required modifications within 30 days of receipt
23 of such written letter of disapproval, unless a longer time is approved by Ecology, or the PLPs may
24 invoke the dispute resolution procedures in Section VII.11 (B) of this Agreed Order for all comments or
25 required modifications the PLPs wish to challenge.

26 6. Performance: The PLPs shall notify Ecology as to the company(s) or firm name(s) of
27 any consulting engineer(s), geologist(s), hydrogeologist(s), or similar expert(s), and of any contractors

1 and/or subcontractors to be used in carrying out the terms of this Order, at least seven (7) calendar days
2 in advance of their involvement at the Site, if possible. The PLPs shall provide a copy of this Order to all
3 consultants and contractors retained to perform work required by this Order and shall ensure that all work
4 undertaken by such consultants, contractors and subcontractors will be in compliance with this Order.

5 Upon request, the PLPs shall provide the names of such engineers, hydrogeologists, toxicologists, or
6 similar experts, and of any contractors or subcontractors used in carrying out the terms of this Order.

7 [WAC 173-340-400\(6\)\(b\)\(i\)](#) requires that "construction" performed on the Site must be under the
8 supervision of a professional engineer registered in Washington. In addition, all work performed by the
9 PLPs pursuant to this Order shall be under the direction and supervision, as necessary, of a professional
10 engineer or hydrogeologist, or similar expert, with appropriate training, experience and expertise in
11 hazardous waste Site investigation and cleanup.

12 Unless manufacturing schedule needs interfere, the PLPs shall provide seven (7) working days
13 notice to Ecology's Project Coordinator prior to commencing any major work activities pursuant to this
14 Agreed Order. Major work activities that require a seven (7) day notice will be described in the Ecology
15 approved RI/FS and interim action work plans. If manufacturing schedules require that major work
16 activities be taken pursuant to this Agreed Order in less than seven days, the PLPs will give twenty-four
17 (24) hours notice to Ecology's Project Coordinator prior to commencing this major work. Except as
18 allowed by [WAC 173-340-515\(2\)](#) or where necessary to abate an emergency situation, the PLPs shall not
19 perform any remedial actions at the Site, outside that required by this Order, unless Ecology approves the
20 independent remedial action in writing prior to the additional remedial action.

21 7. Additional Work: Ecology may determine or the PLPs may propose that additional work
22 is or may be necessary to implement this Agreed Order (henceforward "Additional Work"). If the PLPs
23 propose the Additional Work, Ecology will respond to the proposal in writing within an appropriate time
24 period, not to exceed 30 days. If the Additional Work is required by Ecology, then Ecology will specify
25 in writing the basis for its determination that the Additional Work is necessary. Within fifteen (15) days
26 after the receipt of such written determination, the PLPs shall notify Ecology-NWRO of its willingness to
27 perform the Additional Work or may request a meeting with the Ecology Project Coordinator to discuss

1 the Additional Work as specified in the informal dispute resolution procedures set forth in Section VII.5.
2 If, after such meeting, the PLPs disagree with Ecology's request for Additional Work, the PLPs may
3 invoke dispute resolution procedures set forth in Section VII.11B below. If dispute resolution is not
4 invoked on Ecology's written request for Additional Work, the PLPs shall submit a work plan for Ecology
5 review incorporating the Additional Work within thirty (30) days (or more, if approved by Ecology) after
6 either submitting notice of its willingness to perform or the date of the meeting with Ecology, as
7 applicable. Ecology's review and approval of such work plan shall be subject to the procedures set forth
8 in Section VII.5. Upon written approval of the work plan, the PLPs shall implement the work plan in
9 accordance with the schedule contained therein.

10 8. Access: Except as provided below regarding safety and security precautions, Ecology or
11 any Ecology authorized representative shall have the authority to enter and freely move about the Site that
12 the PLPs own, control, or have access rights to (to the extent that the PLPs have such rights) at all
13 reasonable times for the purposes of, among other things, inspecting records, operation logs, and contracts
14 related to the work being performed pursuant to this Order; reviewing the progress in carrying out the
15 terms of this Order; conducting such tests or collecting samples as Ecology or the Project Coordinator
16 may deem necessary; using a camera; sound recording; or using other documentary type equipment to
17 record work done pursuant to this Order; and verifying the data submitted to Ecology by the PLPs. By
18 signing this Agreed Order, the PLPs agree that this Order constitutes reasonable notice of access, and the
19 PLPs agree to allow Ecology and all Ecology agents access to the Site that the PLPs either own, control,
20 or have access rights to (to the extent that the PLPs have such rights) at all reasonable times, with
21 reasonable notice from Ecology, for purposes of overseeing work performed under this Order. Ecology
22 shall allow split or replicate samples to be taken by PLPs during an inspection unless doing so interferes
23 with Ecology's sampling. The PLPs shall allow split or replicate samples to be taken by Ecology and shall
24 provide seven (7) days notice before any sampling activity.

25 If photographs are to be taken in a U.S. Department of Defense (DOD) area that contains items
26 important to national security, then the PLPs shall provide a competent photographer to take photographs
27 under the instruction of Ecology staff on Site subject to limitations required for protection of DOD

1 secrets, including any required DOD security clearance. All such photographs will be developed and
2 previewed by the PLPs, to enable the PLPs to assure compliance with security requirements for protection
3 of DOD secrets. The PLPs shall provide two copies to Ecology-NWRO of all photographs taken within
4 seven (7) days excepting any photographs for which additional precautions must be followed to protect
5 DOD secrets. The PLPs shall provide Ecology with a log of the photographs taken, and shall identify
6 photographs withheld for protection of DOD secrets.

7 The PLPs' Project Coordinator or other representative may accompany Ecology's
8 representative(s) at all times for purposes of plant security, and compliance with plant and work area
9 health and safety precautions. If Ecology or its representatives seek to perform their duties at the Site in a
10 manner which is not in compliance with any written plant or work area health and safety requirement or
11 rule, or any applicable federal or state law or promulgated regulation, the PLPs' Project Coordinator or
12 other representative may verbally notify such Ecology representative(s) of the non-compliance. Ecology
13 shall ensure that its employees, contractors, and other representatives comply with all applicable health
14 and safety laws, and with all plant and work area health and safety plans of which Ecology or its
15 representatives have notice.

16 If Ecology desires to obtain access to any manufacturing or process areas at which PLPs conduct
17 activities utilizing information which is proprietary, the PLPs may request in writing, pursuant to RCW
18 43.21A.160, that documentation of such areas be designated as confidential business information to
19 protect against Ecology disclosure of information collected. If Ecology desires to obtain access to any
20 manufacturing or process areas at which the PLPs conduct activities utilizing secrets associated with U.S.
21 Department of Defense (DOD) projects, the PLPs may request a reasonable delay to providing such
22 access so that PLPs' and Ecology's representatives may further confer regarding the purpose of the
23 inspection in the area and appropriate precautions for protecting DOD secrets. Ecology shall be
24 responsible for obtaining any DOD required security clearance prior to entering secured areas.

25 If access to areas not owned by the PLPs is necessary for performance of work under this Order,
26 the PLPs shall use reasonable best efforts to obtain such access and shall include Ecology representatives
27 among those persons authorized to enter and inspect property under any access agreements obtained for

performance of work under the Order. The PLPs shall promptly notify Ecology in writing if it is unable to obtain necessary access agreement(s) from owners of properties not owned by the PLPs and shall provide a written description of how the PLPs have used reasonable best efforts to obtain access.

9. Public Participation: The PLPs shall update the Public Participation Plan for the Site, Attachment 4, as needed. Ecology will review and approve updates to the plan and will maintain the responsibility for public participation at the Site. The PLPs shall help coordinate and implement public participation for the Site as specified in the Ecology-approved Public Participation Plan.

10. Retention of Records: The PLPs shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of issuance by Ecology of written notification that all requirements of this Order have been satisfactorily completed, all submittals to Ecology, QA/QC memoranda and audits, final work plans, final reports, field notes and laboratory analytical and testing reports in its possession relevant to this Order. Should any portion of the work performed thereunder be undertaken through contractors or agents, the PLPs agree to include in their contract(s) with all such contractors or agents a record retention requirement meeting the terms of this paragraph.

11. Dispute Resolution: In the event a dispute arises as to a decision by Ecology's Project Coordinator, the parties shall utilize the dispute resolution procedure set forth below.

(A) The PLPs shall utilize the informal dispute resolution processes provided in Section VII.5 prior to proceeding with the formal dispute resolution processes described in Section VII.11.(B).

(B) The PLPs may then request Ecology management review of the Ecology Project Coordinator's letter of disapproval issued at the completion of the informal dispute resolution process set forth in Section VII.5. This request shall be submitted in writing to the Program Manager within seven (7) days of receipt of the Ecology Project Coordinator's letter of disapproval. In such case, the PLPs shall provide the Program Manager with a written statement of their position. The PLPs may also request an extension of the due date for any Submittal, or other activity required hereunder, affected

1 by the dispute. Ecology's Program Manager shall conduct a review of the dispute, and
2 shall issue a written decision regarding the dispute within thirty (30) days of the PLPs'
3 request for review. The Program Manager's decision shall be Ecology's final decision on
4 the disputed matter. If a Submittal is affected by the dispute, then within thirty (30) days
5 after receipt of the Program Manager's final decision, unless a longer time is approved by
6 Ecology, the PLPs shall submit a revised Submittal which conforms to the Program
7 Manager's final decision.

8 The parties agree to utilize the dispute resolution process only in good faith and agree to expedite,
9 to the extent possible, the dispute resolution process whenever it is used. Implementation of the formal
10 dispute resolution procedures in Section VII.11 (B) shall not provide a basis for delay of any activities
11 required in the Order, unless Ecology agrees in writing to a schedule extension.

12 12. Reservation of Rights/No Settlement: This Agreed Order is not a settlement under
13 Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or
14 a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against the
15 PLPs to recover remedial action costs paid to and received by Ecology under this Agreed Order. In
16 addition, Ecology will not take additional enforcement actions against the PLPs to require those remedial
17 actions required by this Agreed Order, provided the PLPs comply with this Agreed Order.

18 Ecology reserves the right to require additional remedial actions at the Site should it deem such
19 actions necessary.

20 Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources
21 resulting from the releases or threatened releases of dangerous constituents from the Site.

22 In the event Ecology determines that conditions at the Site are creating or have the potential to
23 create a threat to the health or welfare of the people on the Site or in the surrounding area or to the
24 environment, Ecology may order the PLPs to stop further implementation of this Order for such period of
25 time or take other action as needed to abate the threat.

26 13. Transference of Property: The PLPs shall notify Ecology-NWRO of the intent to transfer
27 ownership by submitting the form in Attachment 12 to this Order with any changes proposed for the

1 BCA-Auburn Plant noted on the form. Prior to any voluntary conveyance or relinquishment of title,
2 easement, leasehold, or other interest by the PLPs in any portion of the Site, the PLPs shall provide for
3 continued implementation of all applicable requirements of this Order and implementation of any
4 remedial actions found to be necessary as a result of this Order. Nothing in the preceding sentence shall
5 alter or restrict the PLPs obligations under this Order for implementation of the actions described therein.

6 Prior to any involuntary conveyance or relinquishment of an interest in any portion of the Site,
7 the PLPs shall use reasonable best efforts to provide for continued implementation of this Order and of
8 necessary remedial actions, and shall notify Ecology if such efforts are unsuccessful. If Ecology utilizes
9 its authority to provide for continued implementation of the Order or the remedy on the portion of the Site
10 involuntarily conveyed or relinquished (e.g., if Ecology obtains access for the PLPs) the PLPs shall be
11 responsible for such continued implementation as directed by Ecology in writing.

12 Prior to transfer of any legal or equitable interest by the PLPs in the Site or any portions thereof,
13 the PLPs shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or
14 other successor in such interest. At least ninety (90) days prior to finalization of any transfer, the PLPs
15 shall notify Ecology of the contemplated transfer and of the available information, for the portion of the
16 Site to be transferred, concerning SWMUs and AOCs, the likelihood of releases of hazardous constituents
17 at or from that portion of the Site, the likelihood of releases of hazardous constituents from other portions
18 of the Site onto the portion to be transferred, and the remedial actions completed or underway. Ecology
19 shall use best reasonable efforts to review the information submitted by the PLPs on the portion of the
20 Site to be transferred, and issue a written determination within 30 days after receiving same that either (a)
21 Ecology will not require additional remedial investigation work or remedial action at this time on the
22 property to be transferred, or (b) the property to be transferred continues to require additional remedial
23 actions due to known or suspected releases of hazardous constituents on that portion of the Site.

24 14. Compliance with Other Applicable Laws:

25 (A) All actions carried out by the PLPs pursuant to this Order shall be done in
26 accordance with all applicable federal, state, and local requirements, including requirements to
27 obtain necessary permits.

1 (B) The PLPs have a continuing obligation to determine whether permits or
2 approvals exempted under [RCW 70.105D.090\(1\)](#) would otherwise be required for actions under
3 this Order. In the event the PLPs determine that permits or approvals applicable to the action
4 under this Order are exempted under [RCW 70.105D.090\(1\)](#), they shall promptly notify Ecology
5 of this determination. Ecology shall determine whether Ecology or the PLPs shall be responsible
6 to contact the appropriate state and/or local agencies regarding such permits or approvals. If
7 Ecology so requires, the PLPs shall promptly consult with the appropriate state and/or local
8 agencies, and provide Ecology with written documentation from those agencies regarding the
9 substantive requirements those agencies believe are applicable to the remedial action. Ecology
10 shall make the final determination on the additional substantive requirements that must be met by
11 the PLPs and on how the PLPs must meet those requirements. Ecology shall inform the PLPs in
12 writing of these requirements. Once established by Ecology, these substantive requirements shall
13 be made enforceable requirements of this Order. The PLPs shall not begin or continue the action
14 subject to the substantive requirements until Ecology makes its final determination that the
15 appropriate substantive requirements of those agencies have been identified. Ecology shall
16 ensure that notice and opportunity for comment is provided to the public and appropriate agencies
17 prior to establishing the substantive requirements under this section.

18 (C) Pursuant to [RCW 70.105D.090\(2\)](#), in the event Ecology determines that the
19 exemption from the procedural requirements pursuant to [RCW 70.105D.090\(1\)](#) would result in
20 the loss of approval from a federal agency which is necessary for the State to administer any
21 federal law, the exemption shall not apply and the PLPs shall comply with both the procedural
22 and substantive requirements of the laws referenced in [RCW 70.105D.090\(1\)](#), including any
23 requirements to obtain permits.

24 15. Extension of Schedule: The PLPs may request an extension of any deadline or schedule
25 set forth in this Order or an approved Submittal. Any such request shall be submitted in writing to
26 Ecology's Project Coordinator at least twenty (20) days in advance of the pending deadline, if possible.
27 The request shall specify the reason(s) the extension is needed.

1 An extension shall only be granted for such period of time as Ecology determines is reasonable
2 under the circumstances. A requested extension shall not be effective until approved by Ecology.
3 Ecology shall act upon any written request for extension in a timely fashion. It shall not be necessary to
4 formally amend this Order when a schedule extension is granted.

5 The burden shall be on the PLPs to demonstrate that the extension has been submitted in a timely
6 fashion and that good cause exists for granting the extension. Good cause includes, but is not limited to,
7 the following:

8 (A) Unforeseeable circumstances beyond the reasonable control of the PLPs or any
9 person or entity controlled by the PLPs that delay or prevent the timely performance of any
10 obligation under this Order despite the PLPs' best efforts to fulfill the obligation; or

11 (B) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other
12 unavoidable event or casualty.

13 Neither increased costs of performance nor changed economic circumstances shall be considered
14 circumstances beyond the reasonable control of the PLPs.

15 Ecology shall give the PLPs written notification in a timely fashion of any extensions granted
16 pursuant to this section. The period of delay approved by an extension under this section shall be an
17 "excused delay" which is not subject to Stipulated Penalties under Section VIII.

19 VIII. STIPULATED PENALTIES

20 Except for excused delays described in Subsections 5, 11 & 15 of Section VII, for each day the
21 PLPs fail to comply with any time schedules contained in this Agreed Order, or any other time schedules
22 approved or modified in writing by Ecology, the PLPs stipulate and agree that Ecology may, at its
23 discretion, assess a civil penalty. The penalties to be assessed are as follows:

24 1. For failure to commence or complete field work by the time required by this Order; and
25 for failure to submit any work plans or reports by the time required by this Order: \$500.00 per day for
26 each of the first seven (7) days of delay; \$1,000.00 per day for the eighth (8th) through fourteenth (14th)

1 days of delay; \$5,000.00 per day for the fifteenth (15th) through thirtieth (30th) days of delay; and
2 \$10,000 for the thirty-first (31st) through ninetieth (90th) days of delay.

3 2. For failure to submit other required written Submittals not described above by the time
4 required pursuant to this Order: \$250.00 per day for each of the first seven (7) days of delay; \$500.00 per
5 day for the eighth (8th) through fourteenth (14th) days of delay; \$2,500.00 per day for the fifteenth (15th)
6 through thirtieth (30th) days of delay; and \$5,000.00 for the thirty-first (31st) through ninetieth (90th)
7 days of delay. Ecology retains its entire rights to issue penalties or orders for damages or for any other
8 actions that are not covered by this section. Issuance of penalties under this section shall preclude
9 Ecology from issuing any other penalties for that violation.

10 Should a penalty be assessed under this section, the penalty shall begin to accrue from the date on
11 which the work was to have been performed, or the submittal was to have been made, and shall cease to
12 accrue on the date the PLPs perform the required work or deliver the required submittal to Ecology. The
13 assessment of penalties shall be subject to the Dispute Resolution procedures specified in Section VII.11,
14 except that the amount of a stipulated penalty is not subject to challenge. Penalties shall accrue but not
15 become payable until after dispute resolution procedures are completed. All penalties will be payable
16 within forty-five (45) days of assessment or the completion of Dispute resolution procedures if applicable,
17 to the Department of Ecology, Cashiering Section, PO Box 5128, Lacey, WA 98503-0210.

18 3. The PLPs shall not be liable for payment of penalties if the PLPs have submitted to
19 Ecology a timely request for an extension of schedule, and if Ecology has received the written request and
20 has not denied the request in writing.

21 IX. SATISFACTION OF THIS ORDER

22 The provisions of this Order shall be deemed satisfied upon the PLPs' receipt of written
23 notification from Ecology that the PLPs have completed the corrective actions required by this Order, as
24 amended by any modifications, and that the PLPs have complied with all other provisions of this Agreed
25 Order.

1 X. AMENDMENTS

2 Ecology and the PLPs may modify this Agreed Order by mutual written agreement. Substantial
3 modification may require additional public notice and opportunity to comment. Ecology will determine if
4 the Agreed Order modifications are substantial, thus requiring additional public notice and opportunity to
5 comment.

6 XI. ENFORCEMENT

7 1. Pursuant to [RCW 70.105D.050](#), this Order may be enforced as follows:

8 (A) The Attorney General may bring an action to enforce this Order in a state or
9 federal court.

10 (B) The Attorney General may seek to recover, by filing an action if necessary, the
11 amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

12 (C) In the event the PLPs refuse, without sufficient cause, to comply with any term of
13 this Order, pursuant to [RCW 70.105D.050](#), the PLPs will be liable for:

14 (i) up to three times the amount of any costs incurred by the state of
15 Washington as a result of its refusal to comply; and

16 (ii) civil penalties of up to \$25,000 per day for each day it refuses to comply.

17 (D) This Order is not appealable to the Washington Pollution Control Hearings
18 Board. This Order may be reviewed only as provided under [RCW 70.105D.060](#).

19 Effective date of this Order: _____

20
21 THE BOEING COMPANY
22 by, through and for its COMPANY SAFETY, HEALTH,
23 and ENVIRONMENTAL AFFAIRS
24 By: Mr. Kirk Thomson
25 Director of Environmental Affairs

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
By: Julie Sellick, Section Manager
Hazardous Waste and Toxics Reduction
Northwest Regional Office

26 _____
27 Date _____

Date _____

1
2 THE AMB PROPERTY CORPORATION
3 By: Steven Campbell
4 Senior Vice President

5
6 _____

7 Date_____

8
9 _____